In the High Court of Judicature at Madras

Dated: 24/09/2004

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The Honourable Mr.Justice V.KANAGARAJ

Writ Petition No.13241 of 1997

C.Edward George ... Petitioner

-Vs-

The Nagergoil Municipality
rep. by its Commissioner
Municipal Office
Nagercoil
Kanyakumari District. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India
for the issue of Writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.Justin Marshal

For respondent : Mr.G.Sankaran

:O R D E R

The petitioner filed the above writ petition praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in Na.Ka.NO.31748/95/m13 /dated 26.05.1997 and quash the same and direct the respondent to repay the petitioner the deposit of Rs.4 ,10,000/- in the auction dated 13.03.1996 of the Vadasery Kanagamoolam Daily Market and his solvency Certificate along with 24% interest per annum from 13.03.1996 till the date of repayment.

2. From the affidavit filed in support of the writ petition, what comes to be known is that pursuant to the circular of the first respondent dated 13.02.1996 for the collection of toll in several places, thereby directing the persons participating in the auction to deposit a total sum of Rs.4,10,000/- as Earnest Money Deposit and produce solvency certificates for Rs.20,00,000/- or deposit Rs.10,00,000/- in lieu of solvency certificates; that the period of licence was from 1 .4.1996 to 31.03.1997, the petitioner participated in the auction on 13.03.1996 after depositing an earnest money deposit of Rs.4,10,000/- as required and producing a solvency certificate for Rs.35,00,000/- in respect of his properties; that the responde nt assured the confirmation and legal proceedings are over, the petitioner

being the highest bidder for a sum of Rs.4,27,000/-, and as per the general conditions governing the auction, to execute the agreement, the petitioner was given seven days time to deposit 1/3 of his bid amount to the respondent; that till July 1996, the petitioner received no communication from the respondent; while so, the respondent would call upon the petitioner to make a deposit of Rs.12,81,000/- in the treasury, being the licence fee for three months, and to execute an agreement on a ten rupees stamp paper, with the approval of the respondent's on or before 04.07.1996 by 05.00 p.m that there after the petitioner made a representation before the respondent for the refund of deposit amount and hence the petitioner has filed the above writ petition seeking the relief stated supra.

3. Heard both sides.

4. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel appearing for both this Court is able to assess that the respondentCommissioner of Nagercoil Municipality knowing the rules that were formulated for himself to be followed and imposed on the petitioner, has not adopted the same; that instead of giving seven days time as per the Condition 13 of the Auction Notice, he has passed the confirmation order, in his confirmation order dated 01.07.1996, giving the time only upto 5th of July, 1996. The respondent has arbitrarily restricted the period to four days from 7 days flouting the rules frontally and in these said circumstances, the impugned order only becomes liable to be quashed and hence the following order.

In result,

(i) the above writ petition succeeds and the same is allowed as prayed for;
No costs.

Index : Yes
Internet : Yes
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To
The Nagergoil Municipality
rep. by its Commissioner
Municipal Office
Nagercoil
Kanyakumari District.